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Paper No.04042005

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APR 22 2005

In re Application of  
OHTSUKI et al  
Application No. 09/975,114  
Filed: October 11, 2001  
Attorney Docket No. A34699

DECISION ON PETITION

This is a decision on the request for reconsideration of the petition to withdraw the holding of abandonment of the above-identified application filed February 2, 2004. The petition under 37 C.F.R. § 1.181, filed September 15, 2003, to withdraw the holding of abandonment was dismissed on January 7, 2004.

The petition is **GRANTED**.

This application was held abandoned for failure to respond to the non-final Office action within the shortened statutory period of three months from the mailing date of December 18, 2002. The application became abandoned on March 18, 2002 by operation of law.

Petitioner states that the non-final Office action was never received by applicant's representative and attests to the fact that a search of the file jacket and docket records indicates that the non-final Office action was not received. The petition is accompanied by a copy of the docket record for March 18, 2003 and June 18, 2003, the three and six month dates from the non-final Office action mailing date.

Pursuant to M.P.E.P. §711.03(c), it is the petitioner's burden to demonstrate that the non-final Office action was not in fact received at the correspondence address of record at the time it was mailed. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been received had it been received and docketed must be attached to and referenced in the practitioner's statement. See "Withdrawing the Holding of Abandonment When Office

"Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. §711.03(c).

The petition was dismissed because the docket records for March 18, 2003 and June 18, 2003 needed further explanation. Petitioner did not state that the docket records for March 18, 2003 and June 18, 2003 are where the non-received Office action would have been entered had it been received and docketed.

The request for reconsideration satisfies the requirement that the petitioner state that the copy of the docket records are where the non-received Office action would have been entered had it been received and docketed as set forth in M.P.E.P. §711.03(c).

The application file is being forwarded to the Technical Support staff for re-mailing the non-final Office action. The shortened period for response set therein will be reset to expire three months from the date the Office action is remailed.

Questions regarding this decision should be directed to Jose' G. Dees at (571) 272-1569.



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